6. Decline in Qwest's Retail Lines

In the *Omaha Forbearance Order*. the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both "actual and potential competition" that "either is present, or readily could be present."[41] This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that "an analysis of the level of competition for LEC services based solely on a LEC's market share at a given point in time would be too static and one-dimensional."[42] "[T]he presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares."[43]

As demonstrated above. there are multiple competitive alternatives that are widely available in the Minneapolis-St. Paul MSA and that also are being used by mass market consumers. This fact is further confirmed by the declines that Qwest has experienced in its base of switched access lines. Between 2000 and 2006 Qwest's residential switched access lines have declined by approximately [redacted] percent, from [redacted] to [redacted] even though the number of households in the Minneapolis-St. Paul MSA increased by approximately ten percent during the period from 2000 to 2005. *See* Brigham and Teitzel Declaration ¶ 5.

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[41] *Id.* at 19446 ¶ 62.

[42] *In the Matter of Price Cap Performance Review for Local Exchange Carriers. Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T,* Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124. and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197. 11 FCC Rcd 858, 922-23 ¶ 143 (1995).

[43] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522. 21579 ¶ 148 (2004).

Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing given "the widespread availability of cable telephony and its associated multi-service bundles."[44]

Since Qwest's wireline. VoIP, and cable telephony competitors are under no obligation to report customer in-service data. especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics. For example. TNS Telecoms. an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends." Brigham and Teitzel Declaration ¶ 6. In fourth Quarter 2000, TNS reported Qwest's share of residential communications connections in the Minneapolis-St. Paul MSA at [redacted]. *Id.* By the fourth Quarter 2006. Qwest's share of residential communications connections in the Minneapolis-St. Paul MSA had declined to [redacted]. *Id.* These data confirm that Minneapolis-St. Paul-area consumers are utilizing substitutes for Qwest's service to satisfy their telecommunications needs.

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[44] *Regulatory Event **Risk** Headlines Fitch's U.S. Telecom Outlook for* 2007, November 29, 2006. *See* Brigham and Teitzel Declaration. Exhibit 1. p.68.

[45] In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state and tabulates the number of residential customers subscribing to Qwest service (landline. DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market. In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete "connection" under TNS' definition in its calculations of "connections shares." For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections." and Qwest's "connections share" in this example would he 66%. Brigham and Teitzel Declaration ¶ 6.

In the *Sunset Order*. the Commission noted that the availability of wireless and VoIP-based services constrains Qwest's market power given the large and growing percentage of customers who subscribe to both wireline service and wireless and/or broadband Internet access, and who thus have the ability to shift usage in response to price changes.[46] Although the Commission reached these conclusions in the context of analyzing the market for long distance services. the conclusions are applicable here because consumers have access to a similar multiplicity of platforms. Moreover, for those services such as wireless and over-the-top VoIP, where consumers pay an "all you can eat" price, once consumers have purchased these services for use with long distance services. there is no incremental cost for local use.

In sum. consumers have many substitutes for Qwest's wireline services. Increasing numbers of mass market customers subscribe to competitive wireline and cable services. Additionally. increases in subscriptions to broadband lnternet access services allow a growing number of customers to subscribe to over-the-top VoIP service. Moreover, there have been increased subscriptions to mobile wireless services. accompanied by a migration of wireline minutes to mobile wireless minutes. **All** of these trends indicate consumers are increasingly finding that these alternative services serve as substitutes for Qwest's traditional wireline service offerings.[47] Thus. in the mass market, the enforcement of unbundling it is not necessary to ensure that charges are just and reasonable. and not unjustly discriminatory; nor is unbundling necessary for consumer protection. Similarly, dominant carrier tariff regulation is no longer necessary to ensure that charges are just and reasonable, nor for consumer protection.

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[46] *See Sunset Order* ¶¶ 34.37. *38*

[47] *See id.* ¶ 3S.

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B. Enterprise Customers Also Have Access to a Wide Range of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.[48] They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.[49] Accordingly. the Commission has previously expressed its expectation that enterprise customers are aware of the multitude of choices available to them,[50] and are able to take advantage of the competitive choices available to them, seeking out the best-priced alternatives." In the *Omaha Forbearance Order*. the Commission decided to forbear from loop and transport unbundling based on competition from Cox. the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully.[52] As in the mass market. evidence demonstrates that 'the level of facilities-based competition [in the Minneapolis-St. Paul MSA] ensures that market forces will protect the interests of consumers."[53] As the Commission has previously found. numerous categories of competitors provide services

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[48] *See id.* ¶ 46; 4 *T&T/BellSouth Merger Order* ¶ *82.*

[49] *See* ***Sunset*** *Order* ¶ 46.

[50] *See id.*

[51] *AT&T/BellSouth Merger Order* ¶ 82.

[52] *Omaha Forbearance Order*. 20 FCC Rcd at 19448 ¶ 66; ***see*** *id.* 19448-49 ¶ 67

[53] *Id.* at 19416 ¶ 1.

to enterprise customers.” These include cable companies, wireless providers. CLECs, data/IP network providers. VoIP providers. system integrators. and equipment vendors.”

1. Cable

Comcast's cable network in the Minneapolis-St. Paul **MSA** is capable of -- and is -- being used to serve enterprise customers. In the *Omaha Forbearance Order,* the Commission found that Cox's cable facilities were ”capable of delivering both mass market and enterprise telecommunications services.”” The Commission relied on the fact that Cox had “strong success in the mass market. its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market.”” The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers, as compared to mass-market. because the “revenue potential” is greater.[58] The Commission concluded that, in light of these facts. “Cox poses a substantial competitive threat . . . for higher revenue enterprise services.”” In reaching this conclusion. the Commission found the fact that Cox's existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox's incentives and ability to serve these customers.[60]

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[54] *Sunset Order* ¶ *30.*

[55] *See id.: AT&T/BellSouth Merger Order* ¶ *70.*

[56] *Omaha Forbearance Order. 20* FCC Rcd at 19448 ¶ 66.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.* ¶ 66 and n. 174.

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This same analysis applies with equal force here. As demonstrated above, Comcast has had "strong success in the mass market" in the Minneapolis-St. Paul MSA. Moreover, it has a nearly ubiquitous network and therefore possesses "the necessary facilities to provide enterprise services."

While Comcast has traditionally marketed its services to residential consumers, this focus is now expanding. Comcast recently announced that its "next great business opportunity" is to sell Internet. voice and video services to businesses. Brigham and Teitzel Declaration ¶ 18. Comcast plans to invest $250 million this year, and *$3* billion over five years to serve business customers. *Id* Comcast's target is to capture 20% of the business phone market in five years. *Id.*

2. Wireline CLECs

Second, a large number of other competitors provide extensive business retail competition in the Minneapolis-St. Paul MSA. As stated above, CLECs are utilizing Qwest resale or QPP/QLSP wholesale services to compete with Qwest in every wire center in the Minneapolis-St. Paul MSA. Brigham and Teitzel Declaration Highly Confidential Exhibit 2. Qwest estimates that CLECs competing through QPP/QLSP and Resale are providing approximately [redacted] business lines. *Id.* This does not take into account any CLECs competing via Special Access services or CLEC-owned switches and loops or network facilities leased from non-Qwest providers.

As explained above, in connection with mass market service, to the extent CLECs are utilizing their own networks to serve enterprise customers in the Minneapolis-St. Paul MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs that are "lhcilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 36% of its business lines[61] are listed in the white pages directories. Brigham and Teitzel Declaration 17.63. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] business lines associated with facilities-based CLECs in the rate centers in the Minneapolis-St. Paul **MSA.** *Id.* ¶ 25.

In the *Omaha Forbearance Order*. the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition," The Commission held that "this competition that relies on Qwest's wholesale inputs -- which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)."[63]

As in Omaha. competitors in the Minneapolis-St. Paul MSA are competing extensively using Special Access obtained from Qwest. As of December 2006, competitors purchased over

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[61] In particular. business customers often elect to list only their primary telephone number in the white pages directory. To the extent customers of facilities-based CLECs do not request that their telephone numbers be reported to Qwest for input to the white pages database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all. *Id.* n.63.

[62] *Omaha Forbearance Order*. 20 FCC Rcd at 19449-50¶ 68.

[63] *Id.* (Footnote omitted.) The forbearance that Qwest seeks here will not eliminate Qwest's obligations under Sections 201 and 202 to provide its services on just, reasonable, and nondiscriminatory terms.

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[redacted] Special Access channels from Qwest in the Minneapolis-St. Paul MSA. Brigham and Teitzel Declaration ¶ 35. The number of VGE circuits being provided by competitors using Qwest Special Access services exceeds the number of VGE circuits being provided by CLECs using UNEs, QPP/QLSP, and resale combined. *Id.* Over [redacted] of the Special Access VGEs in the Minneapolis-St. Paul MSA are in wire centers that also have competitive fiber in place. *Id.* ¶ 36.

3. System Integrators, IP-Enabled Service Providers and Other Competitors

Third. as the Commission recently acknowledged in the context of the *AT&T/BellSouth Merger Order*. "systems integrators and the use of emerging technologies, including various Internet Protocol (IP-enabled) technologies, are likely to make [the enterprise] market more competitive. and this trend is likely to continue in the future."[64] Demand for systems integrators is driven by the need for the extensive planning and management necessary to create communications systems blending voice. data, video, Internet, and wireless applications. Hrigham and Teitzel Declaration ¶ 63. In the enterprise market, nearly half of all medium and large enterprises use some form of managed telecommunications and IT services. **See *id.*** The North American managed telecom service market generated $18.6 billion in revenues in 2006. *Id.* n. 186. Equipment vendors and systems integrators such as IBM, New Edge Networks, and Minneapolis-headquartered Spanlink Communications, and others compete in the Minneapolis-St. Paul MSA. *Id.* ¶ 64. For example, New Edge provides managed telecom services to small businesses. large corporations. and to telecom carriers. *Id.* IBM helps customers "design, deploy and manage an IP telephony infrastructure that can help reduce the costs associated with

[64] *See AT&T/BellSouth Merger Order* ¶ 81

managing and maintaining separate voice. and data and equipment networks." *Id.* Spanlink provides customer interaction solutions that leverage VoIP technology. *Id.*

The increasing role of system integrators in the enterprise market may be based in part on the fact that VoIP providers are also making competitive inroads into the enterprise market. In 2005. 36% of large and 23% of medium North American organizations interviewed by a major research firm were already using VoIP products and services. That research firm estimated that by 2010. almost half of small and two-thirds of large organizations in North America would be using VoIP products and services. *Id.* ¶ 52. A number of entities that are traditionally thought of as CLECs are now doing significant VoIP business:

- Eschelon's Precision Flex **Pak** VoIP service. provided over Eschelon's managed network accounts for 37 percent of the company's total lines sold;
- Level 3 has partnered with Covad to provide VoIP to small and medium businesses; and
- XO provides VoIP-based services via its XOptions Flex product line

Rrigham and Teitzel Declaration ¶¶ 28.29. 33. In addition Cross Telecom, a Minnesota-based VoIP provider, focuses solely on the business market. *Id.* ¶ 49.

4. Competitive Fiber

Finally. there are extensive competitive fiber networks in the Minneapolis-St. Paul **MSA.** According to GeoTel. a leading provider of telecommunications facilities information. approximately [redacted] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) are now in place in the Minneapolis-St, Paul MSA. and is typically used by Qwest's competitors to serve enterprise and wholesale customers. Brigham and Teitzel Declaration ¶ 37. At least one fiber-based competitor has facilities in [redacted] of Qwest's wire centers in the

Minneapolis-St. Paul MSA. and these wire centers contain over [redacted] of Qwest's residential lines and over [redacted] of Qwest's retail business lines in the MSA. *Id* In addition. competitive fiber is now being used to serve over [redacted] buildings in the Minneapolis-St. Paul **MSA.** *Id.*

Carriers with significant fiber facilities in the Minneapolis-St. Paul MSA are [redacted]. *Id.* ¶ **38.** Additionally, a public-private partnership known as Connecting Minnesota owns over [redacted] route miles of fiber in the Minneapolis-St. Paul MSA. and the Minnesota Department of Administration, which is a party to this partnership. owns an additional [redacted] route miles of fiber within the MSA. *Id.* Connecting Minnesota assigns 20% of its network capacity to state and local government telecommunications users, with the remaining 80% "available for lease to telephone companies, long-distance carriers, Internet service providers and other service providers." *Id.* Exhibit 4, confidential page 2 shows the known fiber routes for 45 entities with competitive fiber facilities in the Minneapolis-St. Paul MSA. Given these significant facilities-based wholesale competitors. who can provide retail or wholesale services. it is clear that Qwest faces competition in its efforts to reap more revenue "indirectly from retail customers who choose a retail provider other than Qwest."[65]

5. Decline in Qwest's Retail Lines

Given the competition from Comcast, wireline CLECs, systems integrators, VoIP providers. entities with competitive fiber networks, and other players it is not surprising that

[65] *Omaha Forbearance Order*. 20 FCC Rcd at 19448-49 ¶ 67.

Qwest has lost a significant proportion, [redacted], of its retail business lines between December 2000 and December 2006. Brigham and Teitzel Declaration ¶ 5. Qwest had [redacted] business retail access lines in December 2000, and just [redacted] in December 2006. *Id.* Just as in the mass market, developing precise measurements of "share" in the business market is difficult given the diverse scope of intramodal and intermodal competition that now exists in the Minneapolis-St. Paul MSA and the general lack of available customer in-service data for these competitors. However, TNS Telecoms conducts primary research in the small business and enterprise business segments and has assembled "revenue share" estimates for those markets as indicators of competitive trends. In stratifying the business market, TNS classifies businesses generating less than $1,500 in monthly telecom spending as small business customers. and business customers spending at or above this level as "enterprise" business customers. *Id.* ¶ 7. In the small business category, TNS' research shows that Qwest's revenue share in the Minneapolis-St. Paul MSA was [redacted] in fourth Quarter 2006. *Id.* In the enterprise market. Qwest's revenue share in the Minneapolis-St. Paul MSA was [redacted] in fourth Quarter 2006. *Id.* These data confirm that Minneapolis-St. Paul MSA businesses are utilizing substitutes for Qwest's service to satisfy their communications needs, particularly at the high end of the market. Systems integrators and the increased use of IP-enabled technologies are likely to make this market more competitive in the future.

III. THE THIRD PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha Forbearance Order,* evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test is met, *i.e.*, it is in the public interest to eliminate the regulations in question."[66] In the *Omaha Forbeurunce Order* the Commission also identified two additional reasons why forbearance from the regulations at issue was in the public interest. Both reasons apply with equal force in the Minneapolis-St. Paul MSA.

First. as the Commission found in Omaha. the costs of the unbundling obligations that Qwest faces in the Minneapolis-St. Paul **MSA** outweigh the benefits. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. As the Commission has explained, "excessive network unbundling requirements lend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[67] Similarly the D.C. Circuit has recognized that mandated unbundling "imposes costs of its own. spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities."[68] Given the extensive facilities-based competition that already exists in the Minneapolis-St. Paul MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim. while the costs of such regulatory intervention are significant." Forbearance will give Qwest. and other facilities-based competitors. greater incentives to continue to invest in facilities. which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation will also "further the public interest by increasing regulatory parity" among telecommunications providers in the Minneapolis-St. Paul MSA.

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[66] *See Omaha Forbearance Order*. 20 FCC Rcd at 19437 ¶ 47, 19453 ¶ 75.

[67] *In the Mutter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Curriers*. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking. 18 FCC Rcd 16978. 16984 ¶ 3 (2003) (subsequent history omitted).

[68] *United States Telecom Ass'n v. FCC*. 290 F.3d 415, 427 (D.C. Cir. 2002).

[69] *See Omaha Forbearance Order*.. 20 FCC Rcd at 19454 ¶ 77.

These regulations were imposed at a time when Qwest's narrowband circuit-switched network was a dominant technology. but this is far from the case today. Qwest is now losing mass market and enterprise lines and customers to wireless and broadband competitors. **As** the Commission noted. it is "in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms."[71] In the face of such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers."

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged."[72] As demonstrated above, cable voice services in the Minneapolis-St. Paul MSA are more widely available than they were in Omaha, and other types of cornpetition are even more widespread than they were in December 2005 when the Commission issued the *Omaha Forbearance* ***Order.*** Moreover, with respect to interstate switched access services, competitive wireless services are particularly significant because customers can use their wireless phones for long-distance calls even when they do not abandon their wireline phone entirely. In fact. large fractions of long-distance calls and minutes have already migrated to wireless. Brigham and Teitzel Declaration ¶ 41.

As the Commission found in Omaha. eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the

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[70] *Id.* at 19454-55 ¶ 78

[71] *See. e.g., In the Matters of Appropriate* ***Framework*** *for Broadband Access to* **the Internet over** *Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14878 ¶ 45, 14890-91 ¶ 71, 14895-96 ¶ 79 and n.241 (2005), *appeal pending sub nom. Time Warner Telecom v. FCC.* No. 05-4769 (and cons. cases) (3rd Cir.). *oral argument* ***held,*** Mar. 16, 2007.

[72] *See Omaha Forbearance Order.* 20 FCC Rcd at 19437 ¶ 47.

unnecessary costs such regulations impose. In particular. "[i]n these environments that are competitive for end users. applying these dominant carrier regulations to Qwest limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages."[73]

The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also have undesirable effects on competition."[74] For example. the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and the BOC[s]," and "adversely affect competition."[75] Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Likewise. the Commission's price cap regulations limit Qwest's ability to respond to market conditions and competition. Unlike other providers in the Minneapolis-St. Paul MSA, to whom price cap regulation does not apply. Qwest is restricted from responding to competition with deaveraged rates and cannot respond to competitors' bundled service offerings Competitors also can use these regulations to their advantage, both to undercut each others' pricing or to maintain artificially high prices.

For these reasons. dominant carrier regulation of the switched-access market is not only unnecessary to ensure just. reasonable. and not unjustly or unreasonably discriminatory rates;

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[73] *Id*

[74] *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area und Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756,15808 ¶ 90 (1997) ("*LEC Classification Order*"), *on recon*.. 12 FCC Rcd 8730 (1997). *Order*, 13 FCC Rcd 6427 (1998), *on further recon*., 14 FCC Rcd 10771 (1999): *see also Sunset* ***Order*** 778.

[75] *LEC Classification Order* at 15807-08 ¶ 89.

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and to protect consumers, but it also impedes Qwest's ability to compete,[76] dampens competition,[77] and is thus harmful to the public interest.

IV. CONCLUSION

For the foregoing reasons: Qwest requests that in the Minneapolis-St. Paul MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of switched access services and CEI/ONA requirements.

Respectfully submitted,

QWEST CORPORATION

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Its Attorneys

April 27. 2007

[76] *See Sunset Order* ¶ 78

[77] *See id.*

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Qwest Corporation for	)	
Forbearance Pursuant to	)	WC Docket No.________
47 U.S.C. § 160(c) in the	)	
Minneapolis-St. Paul Metropolitan	)	
Statistical Area	)	

DECLARATION OF ROBERT H. BRIGHAM AND DAVID L. TEITZEL REGARDING THE STATUS OF TELECOMMUNICATIONS COMPETITION IN THE MINNEAPOLIS-ST. PAUL. MINNESOTA METROPOLITAN STATISTICAL AREA

I. INTRODUCTION AND SUMMARY.

1. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado 80202, and I am currently employed by Qwest Service Corporation ("QSC")[1] as a Staff Director in the Public Policy department. In my current position, I develop and present Qwest's advocacy before regulatory bodies concerning pricing, competition and regulatory issues. I have been employed by Qwest and its predecessor companies for over 30 years, holding various management positions in Marketing, Costs and Economic Analysis, Finance and Public Policy. I have testified before numerous state commissions in the Qwest region

[1] QSC performs support functions. such as regulatory support. for other Qwest entities.

2. My name is David L. Teitzel. My business address is Room 3214, 1600 7th Ave., Seattle. WA 98191. My title is Staff Director and I am a member of QSC's Public Policy organization. In that position I develop and present company advocacy in matters relating to the manner in which Qwest Corporation ("Qwest") is regulated for retail services. These matters include regulatory reform in dockets before state Commissions and the FCC. I have been employed by Qwest and its predecessor companies for over 32 years and have held a number of management positions in various departments. including Regulatory Affairs, Network and Marketing.

3. The purpose of this declaration is to demonstrate that extensive competition exists for Qwest's mass market and enterprise telecommunications services in the Minneapolis-St. Paul Metropolitan Statistical Area ("MSA") from a wide variety of intramodal and intermodal competitors. Consistent with the analytical framework the Commission applied to Qwest's earlier forbearance request with respect to the Omaha MSA, our declaration provides facts and evidence demonstrating that these competitors are actively competing with Qwest in the Minneapolis-St. Paul MSA via a full range of telecommunications service platforms. Many competitors compete for customers by building their own facilities or utilizing other non-Qwest facilities (including competitive fiber cable networks, coaxial cable networks, wireless services, internet-based services, etc.). Competitors also compete via the purchase of wholesale services from Qwest, including Unbundled Network Elements ("UNEs"), Qwest Platform Plus ("QPP"), Qwest

Local Services Platform ("QLSP"),[2] Special Access services, and retail services sold at **a** resale discount.

4. Our declaration and associated exhibits contain information obtained from publicly-available sources and internal Qwest databases, and the sources of data upon which we rely in this declaration are fully identified. We attest that all Qwest data in this declaration is accurate as of the filing date of Qwest's petition in this proceeding and that any information obtained from non-Qwest sources is shown precisely as it is reported by the source. **A** summary of the competitive information in our declaration is set forth below.

5. **As** of 2005, U.S. Census data shows that there were approximately 1.24 million households and 3.14 million people in the Minneapolis-St. Paul MSA,[3] up from 1.13 million and 2.98 million respectively in 2000.[4] Clearly. the Minneapolis-St. Paul MSA is experiencing a steady growth trend. with households increasing almost 10% and population increasing more than 5% over this timeframe. It can be conservatively assumed that demand for telecommunications services in the Minneapolis-St. Paul area has increased apace. However, despite this upward trend in housing and population,

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[2] In January 2007, CLECs began converting their QPP-based services to the new Qwest Local Services Platform ("QLSP") wholesale service as discussed later in this declaration.

[3] The Minneapolis-St. Paul MSA encompasses Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright Counties.

[4] http://www.census.gov/popest/housing/HU-EST2005-CO.html; http://www.census.gov/population/www/estimates/Estimates%20pages_final.html. (Table 1).

Retail Service	Dec. *2000*	Dec. 2006	Difference	% Difference
Residential	[redacted]	[redacted]	[redacted]	[redacted]
Business	[redacted]	[redacted]	[redacted]	[redacted]
Public	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]

---------------------------------end confidential----------------------------------

These access line trends are driven by the proliferation of intramodal and intermodal competitive alternatives to Qwest's services in the Minneapolis-St. Paul MSA, and the range of' alternatives continues to expand, as we discuss in our declaration.

6. The mix of competitive alternatives in the Minneapolis-St. Paul MSA continues to evolve. Traditional competitors, such as CLECs, continue to aggressively compete with

[5] These results exclude any access line losses occurring prior lo December 2000 **and** therefore understate the extent of competitive losses in the Minneapolis-St. Paul **MSA.**

Qwest and intemiodal competitors such as wireless and Voice over lntemet Protocol ("VoIP")[6] providers, are rapidly gaining a significant share of the telecommunications market. It is noteworthy that CLECs are lightly regulated and intermodal competitors are generally subject to even less regulation. Since these competitors are under no obligation to report customer in-service data,[7] especially at the **MSA** level. precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this void by conducting primary customer research to quantify competitive telecommunications dynamics, and Qwest has purchased such research to gain insights into market trends.

For example. TNS Telecoms. an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets. TNS collects actual billing information from a statistically-reliable sample of customers in each state[8] (and select MSAs) and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of Qwest's landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider

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[6] VoIP services are now offered on a "stand-alone" basis hy providers such as Vonage, SunRocket, Packet8, etc., as well as on an "integrated" hasis by Cable MSOs such as Comcast.

[7] The regulatory status of local telephone service provided by VoIP technology is the subject of an open FCC proceeding (IP-Enabled Services. WC Docket No. **04-36.** Notice of Proposed Rulemaking. 19 FCC Rcd **4863).** Currently, telecom providers are not required by FCC instructions fur Form **477,** which is the reporting tool used by telecom providers to report in-service access **line** counts to the FCC. to report VoIP-based access lines. If the FCC rules in its pending IP services proceeding that VoIP service is a telecommunications service. providers of these services may hc required to report in the future access lines served via VoIP. However. until that time. providers utilizing VoIP to provide telecom services are not required ***to*** report in-service data **to** the FCC.

[8] In Qwest's 14-slate territory. the TNS research sample is drawn strictly from exchanges within the **Qwest** service area footprint and docs not include data from Independent service territory.

in the consumer telecommunications market.[9] TNS defines a "connection" as any tclecornmunications service used by the customer. For example, a residential access line, a wireless service and a broadband internet line used by a customer would each be counted as a discrete "connection" under the TNS definition. Thus, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections." with Qwest holding a 66% "connections share."

In fourth quarter 2000, TNS reported that Qwest's share of residential customer connections in the Minneapolis-St. Paul MSA was [redacted]. By fourth quarter 2006, Qwest's share of residential communications connections in the Minneapolis-St. Paul MSA had declined to [redacted].[10] This data confirms that an increasing number of Minneapolis-St. Paul-area consumers are utilizing non-Qwest telecom alternatives to satisfy their telecommunications needs.

7. It is equally difficult to develop precise measurements of "share" in the business markets given the diverse scope of intramodal and intermodal competition that now exists in the Minneapolis-St. Paul MSA, and the general lack of available customer in-service data for these competitors. However. TNS Telecoms also conducts primary research in the small business and enterprise business segments and has assembled "revenue share"

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[9] TNS Telecoms docs not conduct a "connections share" analysis for the business market. and instead produces a "share of total telecom spend" analysis for thr business segment.

[10] Source: TNS Telecoms. February 2007

estimates for these markets that indicate competitive trends.[11] TNS classifies businesses generating less than $1.500 in monthly telecom revenues as "mass market" business customers and businesses generating monthly revenues at or above this level as "enterprise" business customers. The TNS research shows that as of the fourth quarter of 2006. Qwest's share of Minneapolis-St. Paul MSA revenues was [redacted] for the small business market and [redacted] for the enterprise market.[12] Thus, a large and expanding proportion of <u>both</u> small and enterprise business customers in the Minneapolis-St. Paul MSA are purchasing a wide array of telecommunications services from Qwest's competitors. as described in the following sections of our declaration.

8. Comcast Communications. the predominant cable provider serving the Minneapolis-St. Paul MSA. aggressively competes with Qwest in the telecommunications market.[13] As of December 2006, Comcast was serving a geographic area encompassing Qwest wire centers that account for over [redacted] of the Qwest residential lines and approximately [redacted] of the Qwest business lines in the Minneapolis-St. Paul MSA.[14] As discussed later in this declaration. Comcast competes

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[11] TNS Telecoms does not collect "connections share" data in the business market. and instead, determines "revenue share" for the various competitors in the market based on the amount **of** monthly spending of the survey respondents with each telecommunications service provider from whom they report they are purchasing service.

[12] Source: TNS Telecoms. February 2007.

[13] The competitive dynamics regarding Comcast in the Minneapolis-St. Paul MSA are similar to the competitive dynamics in the Omaha **MSA.** where the Commission has previously reviewed and ruled upon a Qwest forbearance petition.

[14] Based on Comcast **media** coverage map of the Twin Cities. MN DMA. The coverage area of the Comcast **media** map was compared to the list of communities Comcast has reported to the FCC it now serves in the Minneapolis-St.Paul MSA to **confirm** the accuracy of the Comcast DMA map for the Twin Cities area **(see** http://twincities.comcastspotlight.com/sites/Default.aspx?pageid=5216&siteid=129&subNav=2. See Exhibit 1, Page 1.

uith Quest by utilizing its own extensive coaxial cable and fiber network and Comcast-owned switches. Comcast offers a broad range of telecommunications services to residential. small business and enterprise business customers in the Minneapolis-St. Paul MSA.

9. In addition to Comcast. there are at least [redacted] unaffiliated CLECs actively competing with Qwest in the Minneapolis-St. Paul MSA, ranging from national CLECs such as AT&T, McLeodUSA, and XO Communications. to regional CLECs such as Eschelon, Integra, POPP Telecom and TDS Metrocom. As discussed in following sections of our declaration, these CLECs are serving residential customers as well as business and governmental customers of virtually all sizes. As of December 2006, CLECs are competing with Qwest in 100% of the wire centers in the Minneapolis-St. Paul MSA.[15]

10. A significant amount of fiber optic cable has been placed by competitive service providers in the Minneapolis-St. Paul MSA, and this fiber is used to bypass Qwest's network. According to GeoTel, approximately [redacted] miles of fiber ***(excluding*** fiber owned by Qwest and Quest's affiliates) has been placed in the Minneapolis-St. Paul **MSA.** This fiber **is** typically used by Qwest's competitors to serve enterprise and wholesale customers.[16] The GeoTel data shows that at least one fiber-based competitor

[15] Source: Quest Wholesale Database. December 2006

[16] GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel docs not possess complete data regarding each fiber-hased

is present in [redacted] of Quest's wire centers in the Minneapolis-St. Paul MSA, and these wire centers contain over [redacted] of Qwest's retail residential lines and [redacted] of Qwest's retail business lines in the Minneapolis-St. Paul MSA. In addition. competitive fiber is now being used to serve over [redacted] buildings in the Minneapolis-St. Paul MSA.[17]

11. Landline-based competitors are also using special access services purchased from Qwest to serve customers in the Minneapolis-St. Paul MSA. As of December 2006, competitors purchased over [redacted] voice grade equivalent ("VGE") special access channels in this geographic area—a number that exceeds the number of VGE circuits provided to CLECs via unbundled network elements, Qwest Platform Plus and resale combined

12. Wireless service is used as a direct substitute for traditional landline service by an ever-increasing number of customers and is contributing to Qwest's retail access line reductions. At least four major wireless service providers, including Verizon, AT&T, T-Mobile and Sprint, are now providing service in the Minneapolis-St. Paul MSA,[18] with at least one wireless provider providing service in every Qwest wire center. The Commission's recent Commercial Mobile Radio Services ("CMRS") report released on

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competitor. and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in October 2006.

[17] Source: GeoTel. October 2006

[18] Qwest also provides wireless service in the Minneapolis-SI. **Paul** MSA. According to an analysis by TNS, however. Qwest holds only a [redacted] share of the consumer wireless market in the Minneapolis-St. Paul area.

September 29. 2006 cites to various sources in estimating that **6** to 12 percent of U.S. households have replaced their landlines with wireless service.[19] Other research, however. suggests that these estimates actually understate the proportion of customers in the Minneapolis-St. Paul MSA who have "cut the cord." On October **18,** 2006, Telephia, an independent research entity specializing in Consumer market research, released the results of primary research showing that 15.2% of the households polled in the Minneapolis-St. Paul metropolitan area used only wireless service in their homes and no longer subscribed to landline telephone service.[20] There can be no doubt that wireless service represents a significant and growing form of direct competition to Qwest's landline service business in the Minneapolis-St. Paul MSA.

As discussed later in our declaration, the number of wireless subscribers in Minnesota climbed to 3.5 million in June 2006 and now significantly exceeds the number of ILEC and CLEC lines combined in the state. Further. as described later in our declaration, Yankee Group research found that more than 51% of local calls and **68%** of long distance calls have been replaced by wireless. As customers with both a wireless and wireline phone find that an increasingly significant proportion of their voice calls (as well as internet access functionality) can be accommodated via cellular phones, an even greater proportion of Qwest's residential and business landline customer base will be encouraged to "cut the cord."

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[19] CMRS Report at pp. 89-90.

[20] *Midwesterners Cut the Cord: Households in Detroit and Minneapolis-St. Paul Have The Highest Rate of Wireless Substitution Among 20 Largest U.S. Cities. According to Telephia*: Oct. 18. 2006. See Exhibit 1. Page 2.